THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Steven H. John, Circuit Court Judge

Appellate Case Number 2022-001004

Thomas Wade Long and Clyde Kiser, Individually and on behalf of TNW and More, LLC, Respondents,

v.

Timothy D. Kettner, Donald Kettner, and TNT and More, Inc., d/b/a Crab Catchers on the Waterfront, Defendants,

Of whom Donald Kettner and TNT and More, Inc., d/b/a Crab Catchers on the Waterfront, are Appellants.

FINAL REPLY BRIEF OF APPELLANTS

Michael S. Harrison, Esq.
SC Bar #100462
Murray Law Group, LLC
4214 Mayfair Street, Suite B
Myrtle Beach, SC 29577
(843) 445-9933
Attorney for Appellants

Howell Bellamy, III
Bellamy Law Firm
1000 29th Avenue North
Myrtle Beach, SC 29577
(843) 448-2400
Attorney for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Steven H. John, Circuit Court Judge

Appellate Case Number 2022-001004

Thomas Wade Long and Clyde Kiser, Individually and on behalf of TNW and More, LLC, Respondents,

v.

Timothy D. Kettner, Donald Kettner, and TNT and More, Inc., d/b/a Crab Catchers on the Waterfront, Defendants,

Of whom Donald Kettner and TNT and More, Inc., d/b/a Crab Catchers on the Waterfront, are Appellants.

FINAL REPLY BRIEF OF APPELLANTS

Pursuant to Rule 240, SCACR Appellants hereby submits this Reply Brief. For the following reasons, the Court should reverse the order of the trial court.

Statement of the Facts

Respondents' Statement of Facts supporting his arguments is replete with mischaracterizations, inaccuracies, and falsehoods and requires Appellants to correct the facts in a manner consistent with the record. Appellants take issue with the following Statement of Facts as put forth by Respondents:

1. Respondents state that, "...the mobile hut being used as part of the marina utilized by the Plaintiffs/Respondents was not properly licensed..." (Respondents' Initial Brief, Page 6,

¶2, Lines 2-3) This is inaccurate. The mobile hut was being used as a harbormaster's office and did not meet the state requirements to be used as such. More importantly, the mobile hut was actually unpermitted for any use on Appellants' property. Respondents argue in the body of their Reply that use of the "hut" is not at issue. In fact, the presence of and use of the "hut" is central the case at bar. Respondents want to this Court to ignore their unclean hands in erecting the structure without permission, maintaining it as a harbormaster's office which doesn't comply with regulations, and utilizing it continually to the detriment of Appellants, as is evident by the fines levied against Appellants as a result of Respondents violating the law by both placing and using the structure unpermitted. It bears noting that no action was pending against Appellants for the structure at the time the Consent Order was entered into, nor was it clear at that time in the litigation what the status of the hut was with regards to it permissibility.

2. Respondents state that, "...the mobile hut, which is worth far more than the $7500.00 jurisdictional limit of the South Carolina Magistrates..." (Respondents' Initial Brief, Page 6, ¶2, Lines 4-5) Respondents failed to put forth any evidence of the mobile hut on the record. Furthermore, the matter before the magistrate was criminal in nature. The jurisdictional limit of civil disputes before the magistrate is irrelevant and was not argued in the lower court.

3. Respondents state that, "Defendants/Appellants did not seek the consent of or notify Plaintiffs/Respondents of their intention to remove the mobile hut with 10 days as required by the Consent Order." (Respondents' Initial Brief, Page 6, ¶2, Lines 6-7) That is patently false. The Consent Order as cited requires 7-days-notice as cited in Respondents own brief. More importantly, Appellants did provide notice of their intent to remove the structure

along with a copy of the magistrate's order. Respondents refused to consent and filed a motion with the circuit court to collaterally attach the magistrate order rather than seeking relief before the magistrate.

4. Respondents state that, "...the County refused to enforce the Order from the magistrate require the removal of the mobile hut from the property." (Respondents' Initial Brief, Page 6, ¶2, Lines 8-9) This is false. The County was not charged with removal of the hut. The County never refused to remove the hut. In fact, Appellants contacted the Horry County Sheriff's Department to supervise removal of the mobile hut. The sheriff contacted the magistrate judge to confirm that removal was proper by Appellants, and the magistrate judge affirmed that it was proper for Appellants to proceed.

5. Respondents state that, "Neither Order address nor references the improper removal of the mobile hut." (Respondents' Initial Brief, Page 7, ¶1, Lines 4-5) While, it is unclear which orders the Respondents are referring to, the June 17, 2022 Order Granting Plaintiffs' Motion for Temporary Restraining Order does in fact address removal of the mobile hut. In fact, it was the force of the motion filed by Respondents and was the central issue of both their motion and judge's order. In fact, it remains the law of the case which is why the appeal was filed in the first place.

6. Respondents state that, "Neither did either of these Orders attempt to alter, overrule, disparage, or nullify any order from the magistrate." (Respondents' Initial Brief, Page 7, ¶1, Lines 5-6) This is false. The June 17, 2022 Order Granting Plaintiffs' Motion for Temporary Restraining Order granting instructs Appellants to restore the hut to its placement and condition prior to its removal. That is a direct on the magistrate's lawful order to remove it. In fact, the force of the argument between the parties was whether or

not the circuit court has the jurisdiction to issue an order in opposition to the magistrate's order where the magistrate clearly had exclusive jurisdiction over the subject matter.

7. Respondents state that the Orders, "simply prohibited Appellants from shutting down the walkway during a three-day period over Memorial Day." (Respondents' Initial Brief, Page 7, ¶1, Lines 6-7) This is false on its face and ignores the plain language of the Order at issue.

8. Respondents state that, "Appellants forcibly removed the rental hut from the property on June 5, 2022 without complying with Judge Keesley's Consent Order." (Respondents' 'Initial Brief, Page 7, ¶2, Lines 1-2) This is false. Appellants removed the rental hut pursuant to a lawful order, after providing written notice, and did so without force with the approval of the magistrate and under supervision of the Horry County Sheriff's Office.

9. Respondents state that, "Appellants destroyed the rental hut." (Respondents' Initial Brief, Page 9, ¶2, Line 2) That is false. There is nothing on the record indicating such. In fact, the rental hut remains intact at an off-sight location.

Respondents' arguments are based on their own misstatements and falsehoods as detailed above. It is important that the Court consider the actual facts of the case in analyzing Respondents arguments, as they all fail in light of the true facts in evidence in this case. As Respondents are barred from presenting "facts" not in the record. *See* Rule 210(h), SCACR; *See also* McCall v. IKON, 380 S.C. 649, 670 S.E. 2nd 696 (Ct. App. 2008).

I. Respondents' standard of review is improper as it ignores the issues on appeal.

There are multiple issues raised on appeal that have differing standards of review. The singular standard of review presented by Respondents ignores its own motion at issue in this appeal

as well as the arguments made by Appellant entirely. Respondents only position is that the proper standard is abuse of discretion sighting to the injunctive nature of only one of the issues on appeal. Respondents' argument completely ignores the issue of its own motion being contempt as well as injunctive relief, and Respondents fail to address any of the other arguments or the proper standards put forth by Appellant.

Furthermore, the Orders on appeal contain errors of law and fact. Judge John erred in factually in his order directing a fuel pump be restored to the Appellants property, but this was inconsistent with the facts and in opposition to the law. There was no fuel pump in dispute. It was a fuel tank that was unpermitted, but at the time of the hearing on the matter, the fuel tank had been removed by Respondents in accordance with the law.

Additionally, Judge John's Order represents a collateral attack on a magistrate's order, the subject matter of which was exclusively within the jurisdiction of the magistrate. Questions of jurisdiction are questions of law. Knight v. Kelly, 289 S.C. 318, 345 S.E. 2nd 490 (1986). Martin v. Skinner, 286 S.C. 527, 335 S.E. 2nd 252 (Ct. App. 1985). More importantly, Judge John's order, if followed by Appellants, would force Appellants to act unlawfully placing an unpermitted structure on its property in violation of county, state, and federal legislation.

As mentioned in Appellants' initial brief, the court was presented with the facts and the law and issued an order in opposition to both. Because the issues raised by Appellants on appeal are legal, the de novo standard should apply; however, even under the abuse of discretion standard, Appellants should prevail.

Also given that there are clear errors in the trial court's order, the clear error standard should be applied to the errors mentioned herein and in Appellants' Initial Brief.

II. The appeal is not moot.

A. Judge John's Order remains enforceable.

Judge John's Order remains enforceable and is only stayed by this appeal. Respondents would have this court believe that the matter is moot because one of the orders discussed an issue that pertained only to an issue that occurred on Memorial Day weekend. That argument completely ignores the other order and the arguments on the record regarding this matter. Appellants concede that the issues of Memorial Day weekend are moot. However, that does not render the entire appeal moot.

Respondents argue that the Order merely reaffirmed a previous Consent Order. That ignores the nature of the motions filed by Respondents that are in controversy in this appeal. One of the motions was a motion for contempt. *See* Respondents' Motion for Contempt and Sanctions Against the Defendants (Appellants) Donald Kettner and TNT and More, Inc. (R. pp. 906-956). The other motion was for injunctive relief. *See* Respondents' Ex Parte Motion for Expedited Emergency Injunction (R. pp. 848-869). The motion for contempt was denied. See Order Granting Respondents' Motion for Temporary Restraining Order (R. p. 6). The only matter the court ruled upon in favor of Respondents was the motion for injunctive relief. If the Consent Order, as Respondents argue, was simply being reaffirmed then a motion for an injunction would not have been proper. The proper motion for violation of an order is a motion for contempt or rule to show cause, not filed by Respondents, which again was denied by the trial court. See generally Miller v. Miller, 375 S.C. 443, 454-455, 652 S.E. 2nd 754, 760 (Ct. App. 2007); see also Widman v. Widman, 348 S.C. 97, 119, 557 S.E. 2nd 693, 705 (Ct. App. 2001). For Respondents to take the position that the issue was moot runs counter to its own motions practice. The May 27 Order is moot as discussed above. Appellants do not disagree. However, again Respondents fail to understand Appellants' argument and seek to narrow the issue in a manner which would render

the entire appeal moot.

In fact, all the arguments attacking the magistrate are irrelevant. Respondents were notified of the magistrate proceedings. Respondents' counsel appeared at multiple hearings. Respondents' counsel sought to intervene and filed a motion to do so. However, Respondents' counsel never prosecuted that motion nor did Respondents ever appeal the issue to the circuit court. *See* Order on Motion to Vacate Order (R. pp. 20-21). Now, they would ask that this Court ignore the proper procedure to address their issue which was to file an appeal of the magistrate order. They complain that their due process rights were violated, but they made no attempt to enforce those rights except in their reply in the instant appeal. Id. Respondents want this Court to ignore their procedural failures to enforce their due process rights, ignore their own obligation to seek due process by the letter of the law, and have this Court bless their failures with a favorable finding regarding due process. That is absurd.

Furthermore, Respondents falsely state that the County refused to enforce the Order. The Order did not direct the County to do anything. See (Magistrate) Order (R. pp. 18-19). So, one cannot fail to do what one has not been ordered to do. That is basic logic. There was no duty imposed by any ruling or law upon the County. So, to put this forth is nothing more than a distraction.

One fact Respondents and Appellants do agree upon is that the hut was removed. The only issue is that Respondents' claim it was done improperly even in the face of a lawful order that they never sought to challenge, and the time to do so has long passed.

B. The rental hut was not destroyed.

Respondents would have this court believe that the rental hut was destroyed. However, there is nothing in the record to support this claim. Therefore, it cannot be used

as a basis to support Respondents' claim that the appeal is moot. Rule 210(h), SCACR. In fact, the rental hut is intact, as is evident by the facts on the record. *See* Second Amended Affidavit of Robert Benoit in Opposition to Plaintiffs' Motion for a Temporary Restraining Order and/or the Proposed Temporary Restraining Order (R. p. 122, ¶22); *See also* Second Amended Affidavit of Robert Benoit in Opposition to Plaintiffs' Motion for a Temporary Restraining Order and/or the Proposed Temporary Restraining Order (R. p. 204)

III. The lower court did err as it did not simply reaffirm the Consent Order.

The magistrate's order is the law of the case, and therefore, it is improper for Respondents to raise the issues in his appeal that were not raised by Respondents in the lower court's proceedings.

A. Judge John's Order is a direct attack and collateral attack on the magistrate's order which seeks to deprive the magistrate of the exclusive jurisdiction bestowed on the magistrate by law.

A circuit court has only appellate jurisdiction over a judgment from magistrate court. State v. Adler, 278 S.C. 66, 67, 292 S.E .2d 185, 186 (1982). Chapter 1 of Title 18 contains "General Provisions" applicable to all appeals. Section 18-1-10 of the Code of Laws specifies that, subject to other code provisions not applicable here: "The *only mode* of reviewing a judgment or order in a civil or criminal action [in Magistrates' Court] . . . *shall be as prescribed by this Title* [18]." (Emphasis added). "*Every person convicted before a magistrate of any offense whatever and sentenced may appeal from the sentence to the Court of Common Pleas for the county.*" S.C. Code Ann. § 18-3-10. (Emphasis added).

Further, all appeals from magistrates' courts in criminal causes shall be taken and prosecuted as prescribed in Chapter 3, Title 18. Appeals. For example, upon conviction and

sentence, under S.C. Code Ann. §18-3-30, the appellant has ten days to "serve notice of appeal upon the magistrate who tried the case and upon the designated agent for the prosecuting agency or attorney who prosecuted the charge, stating the grounds upon which the appeal is founded." S.C. Code Ann. § 18-3-10. Moreover, under S.C. Code Ann. §22-3-1000, "*a motion for a new trial may not be heard unless made within ten days from the rendering of the judgment.* The right of appeal from the judgment exists for thirty days after the rendering of the judgment." (Emphasis added).

Here, Respondents' motion for a temporary injunction, as drafted by Respondents' counsel, sought to bypass the statutory requirements of Chapter 3, Title 18; and the circuit court affirmed this improperly. The circuit court issued its order requiring Appellants to restore the hut to its prior condition before Judge Mayers had an opportunity to hear and rule on the Respondents' Motion for an Amendment of the Judgment or, alternatively, for a New Trial. A motion that Respondents filed after the deadline to file such and failed to prosecute.

As such, the Defendant's Motion for a temporary injunction directly violates S.C. Code Ann. §18-1-10 which specifies, "The *only mode* of reviewing a judgment or order in a civil or criminal action [in Magistrates' Court] . . . *shall be as prescribed by this Title* [18]." In light of the statutory requirements of Chapters 1 and 3, Title 18 Appeals, the circuit court lacked the authority and jurisdiction to review the legality or to set aside Respondents' guilty plea and Judge Mayers' abatement order as impliedly requested in the Respondents' Motion for a Temporary Injunction. See State v. Dickert, 260 S.C. 490, 197 S.E.2d 89 (1973) (A circuit court has only appellate jurisdiction over a judgment from magistrate's court).

Again, Respondents failed to prosecute their motion to intervene and failed to file a timely appeal of the magistrate's order. Those failures constitute an affirmation of the magistrate's order

as the law of the case. If an offended party does not challenge a ruling, then it becomes the law of the case. See Bailes v. Young, 315 S.C. 166, 432 S.E. 2nd 482 (1993); See also Crossmann Communities of N. Carolina, Inc. v. Harleysville Mut. Ins. Co., 411 S.C. 506, 524, 769 S.E.2d 453, 463 (Ct. App. 2015) (Under the law of the case doctrine, "[a]n unappealed ruling is the law of the case and requires affirmance." Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 431, 699 S.E.2d 687, 691 (2010); see Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 160–61, 177 S.E.2d 544, 544 (1970) (finding an unchallenged ruling, "right or wrong, [was] the law of th[e] case"). "The doctrine of the law of the case applies to an order or ruling which finally determines a substantial right." Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) (internal quotations marks omitted). The law of the case doctrine applies to issues explicitly decided and issues necessarily decided in the former case. Sloan Constr. Co. v. Southco Grassing, Inc., 395 S.C. 164, 170, 717 S.E.2d 603, 606 (2011).

The circuit court lacked authority and jurisdiction to review the legality or to set aside Judge Mayers' abatement order based upon the statutory requirements of Chapters 1 and 3, Title 18, Code of Laws of South Carolina, and also on the grounds the Judge Mayers' unappealed ruling is the law of the case. In fact, Respondents cannot properly raise the issue as they have in their brief. Bailes, 315 S.C. 166, 432 S.E. 2nd 482 (1993).

Respondents argue that the Consent Order is a collateral attack on the magistrate's order; when in fact, it that is not the Order that poses a collateral attack at all nor is it what Appellants have argued. Respondents' argument misses the mark entirely. The Order that is the basis for the collateral attack is the Order issued by Judge John entitled Order Granting Plaintiffs' Motion for Temporary Restraining Order dated June 17, 2022. Appellants have not made any argument that

the Consent Order is a collateral attack on anything.

Respondents also misstate and further misunderstand Appellant's argument regarding the magistrate's order by falsely stating the Appellants are arguing that the magistrate can overrule a restraining order issued by a judge. While it is unclear which restraining order the Respondents are referring to, that argument is simply not made by Appellants. Respondents misstate Appellants argument and then raises the concepts of due process and jurisdictional limits as a challenge to Appellants arguments improperly.

B. Respondents failed to exercise the very rights they now claim were abridged and now improperly raise them on appeal.

As the magistrate's order was not properly challenged on an appeal, it is now the law of the case. Id. Respondents cannot now assert the rights it failed to exercise when it failed to prosecute its motion to intervene in the magistrate's proceedings and failed to appeal the magistrate's order in a timely manner. Id. The magistrate issued an order on September 16, 2022 denying Respondents' Motion to Intervene and dismissing their appeal as untimely. Therefore, any argument Respondents seek to make now is foreclosed, as no argument for standing is a part of the record whatsoever, except for that of the Appellants. Id.

It is interesting that Respondents raise a due process argument when they have failed to exercise their due process rights on every level. Respondents attempted to intervene in Appellants criminal case through a motion. However, neither Respondents nor their counsel prosecuted that motion, and in fact, abandoned the motion when they failed to show up for any hearing subsequent to their filing of such. If Respondents were interested in due process, perhaps they should have attended the hearings regarding their own motion and the hearing in where the magistrate issued a final disposition. Moreover, one cannot complain about due process when they did not seek to

exercise their due process rights. Id. Respondents could have appealed the magistrate's decision, but they missed the deadline to do so, and then they attempted to clean that up by filing motions with the circuit court to challenge the magistrate's decision. The proper process would have been to file an appeal of the magistrate's order, but because Respondents blew the deadline for appeal from the magistrate's decisions, they now are forced to argue an untenable position that they were somehow deprived of the due process rights they failed to exercise appropriately. Rather, they ask this court to overlook their failure to exercise their due process rights while arguing those rights were somehow violated.

Furthermore, Respondents misstate the facts in support of this absurd position, arguing they did not get "any hearing" before the shed was removed. They also falsely state that the shed was "forcibly removed" and "destroyed." After accepting Respondents' motion to intervene, a hearing was set to deal with that motion and to resolve the entirety of the magistrate matter. Respondents were given notice of that hearing at the hearing where they filed their motion. They simply did not show up for it and abandoned their motion. Furthermore, the shed was moved in accordance with lawful order of the magistrate. To characterize the removal as forcible is hyperbolic at best and, at worst, disingenuous. There is also no evidence whatsoever in the record that proves the shed was destroyed. In fact, it was not, but neither Appellants nor Respondents can argue facts not in evidence on appeal.

Respondents again want this Court to make assumptions about facts not in evidence when they state that Horry County refused to enforce the "illegal order" of the magistrate. Setting aside the fact that the magistrate's order was lawful, there is absolutely no indication that Horry County refused to enforce anything. The Order does not direct the County to do anything. It directs Respondents to remove the unlawful structure.

While Respondents' elementary resuscitation of how our republic functions is noted, it fails to understand the concepts it poses as inapposite to the situation at bar and is improper under SCACR Rule 210(h), as it was never argued on the record.

Jurisdiction over the issue was statutory in this case. *See* S.C. Code §§ 22-3-540, 550. Respondents fail to understand that concept, but then go further to insult the magistrate by stating that the magistrate is a non-lawyer. Perhaps, Respondents failed to read the part of our governmental structure provided by the legislature that does not require a magistrate to have a law degree.

Appellants were not deputized in any sense of the word, as Respondents argue. In fact, they were simply following the order of a court to remove a violation from their lawful property, a directive that the magistrate is not only entitled to issue but does so on a regular basis under color of the statutory jurisdiction over such matters granted to it by the legislature. While Respondents may lack respect for the authority granted by the legislature to the magistrates, they cannot ignore such.

Respondents indicate that they are seeking reparations for the destruction of the hut in a separate legal proceeding, but no such case has been filed to date. Furthermore, Respondents state that the issue on appeal is not the removal of the hut, but then raise the removal and alleged destruction of the hut as a basis for this Court to rule in its favor. Either the issue before this court involves the hut or it does not. Respondents do not get to have it both ways.

C. The lower court did in fact err in denying Appellants motion to reconsider.

Respondents argue that Judge John did not treat the Respondents' motion as new injunction. See Respondents' Initial Brief at Page 12, ¶ 2, Line 5. Judge John erred in failing to analyze the merits of the motion Respondents filed, a motion for an injunction. Respondents filed

for an injunction rather than a motion for contempt. While they did file a motion for contempt, that motion was denied. The motion that Judge John ruled on in favor of Respondents was a motion for an injunction. That motion failed for the reasons outlined in Appellants' Initial Brief. Respondents would have this Court ignore the nature of their own motion and the lower court's order.

While Appellants have argued that the motion for injunction was an improper collateral attack on the magistrate's order, Appellants did not argue that the motion was anything but a motion for an injunction, albeit a weak motion without evidentiary support and wholly lacking support under the law.

Judge John did not make any finding that the Appellants violated the Consent Order. See Order Granting Respondents' Motion for Temporary Restraining Order (R. pp. 5-7). If he had, then he would have issued an order in favor of Respondents' motion for contempt. He did not. Id. They further bolster this argument by bestowing equitable powers upon the lower court but provide no basis in the law for the equitable powers they assign to the court, nor do Respondents define those equitable powers.

Furthermore, Respondents put forward the idea that an affidavit, with all of its inherent bias, is sufficient to carry its burden for an injunction. A self-serving statement alone cannot carry the burden. *See generally* SCRCP Rule 65. An affidavit alone is only to be used in support of a motion submitted and heard ex parte. That is not how this matter was heard.

Essentially, Respondents would have this court believe they were entitled to an injunction because they said so in their affidavit. Without further, that one piece of evidence does not carry the burden and there is no support for this position in the common law. Respondents cite to the Court's decision in Peek. However, this case is not analogous to the case at bar. In that case, it

appears that those appellants were seeking an ex parte ruling based on an affidavit. In this case, it was not handled ex parte. A full hearing was convened. Respondents in this case were given the opportunity to be heard and Appellants to respond. Appellants argued in the motion hearing that the Respondents had not carried their burden. Respondents did, in fact, fail to carry the burden after being given the opportunity to conduct a full hearing on the matter and relied to their detriment on nothing more than a biased affidavit of one of the Respondents which fell far short of the burden necessary for injunctive relief.

IV. Respondents' brief is replete with matters not on appeal and not in the record.

Counsel attempts to narrow the issues by stating that the only issue at bar before the trial court was the "shutting down the only egress and ingress to the floating docks at the marina over Memorial Day Weekend." However, this completely ignores the language of the documents he identifies in support of his position. In fact, the force of both motions and the corresponding orders revolves around the hut. Respondents would mislead this Court by their statements that the Orders on appeal do not address or reference the hut. The "hut" is central to both motions and their corresponding orders.

The "hut" is actually referenced in Judge John's Order. Order Granting Respondents' Motion for Temporary Restraining Order (R. p. 6). So, it is wholly inaccurate for Respondents to state in their Initial Brief that the Orders on appeal did not reference or address the hut. The term shed, hut, rental hut, have been used interchangeably by the trial court and the parties as is evident by the record on appeal.

Respondents' counsel states that there is no reference to the hut in Judge John's Order Granting Plaintiffs' Motion for Temporary Restraining Order on the Motion to Reconsider. While the word is not used, Respondents' position ignores the entire record of the proceedings on this

matter and its own underlying motion upon which the Order were issued. Furthermore, the Judge's failure to properly address Appellants Rule 59 Motion is a matter on appeal. It would seem that Respondents' position is that Judge John did, in fact, fail to address the issues raised by Respondents. It appears that Respondents have confused an exhibit to their Ex Parte Motion for Emergency Injunction with their actual motion. While there is an Order from Judge John attached as an exhibit to the Ex Parte Motion, it is not the motion which sought the order that is before the court. In fact, we would agree that the issue of egress and ingress was moot, but that is not the issue before this court. It seems to be nothing more than obfuscation or mistake by Respondents.

Conclusion

Respondents are seeking to introduce matters not on the record in support of their position. They have introduced "facts" that are not in evidence. They have misstated and mischaracterized the facts in this case in an attempt to bolster their position. None of these improper devices negate the fact that the circuit court issued an Order with errors of law and fact, attempting to negate the ruling of a magistrate's order which was lawful and issued under jurisdiction exclusive to that court. The Order is, in fact, an improper collateral attack on the magistrate's order. It is unlawful as it directs Appellants to violate the law, and therefore it should be rescinded.

s/*Michael S. Harrison*
Michael S. Harrison, Esq.
SC Bar #100462
Murray Law Group, LLC
4214 Mayfair Street, Suite B
Myrtle Beach, SC 29577
(843) 445-9933
Attorney for Appellants

s/Howell Bellamy, III
Howell Bellamy, III
Bellamy Law Firm
1000 29th Avenue North
Myrtle Beach, SC 29577
(843) 448-2400
Attorney for Appellants

April 12, 2023
Myrtle Beach, SC

RECEIVED
Apr 12 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Steven H. John, Circuit Court Judge

Appellate Case Number 2022-001004

Thomas Wade Long and Clyde Kiser, Individually and on behalf of TNW and More, LLC, Respondents,

v.

Timothy D. Kettner, Donald Kettner, and TNT and More, Inc., d/b/a Crab Catchers on the Waterfront, Defendants,

Of whom Donald Kettner and TNT and More, Inc., d/b/a Crab Catchers on the Waterfront, are Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that Appellants Final Reply Brief is identical to Appellants Reply Brief, except for References to the Record and Corrections of Typographical Errors and Misspellings contained in Appellants Initial Brief.

April 12, 2023

s/Michael S. Harrison
Michael S. Harrison, Esq.
Murray Law Group, LLC
4214 Mayfair Street, Suite B
Myrtle Beach, SC 29577
(843) 445-9933
Attorney for Appellants

s/Howell Bellamy, III
Howell Bellamy, III, Esq.
Bellamy Law Firm
1000 29th Avenue North
Myrtle Beach, SC 29577
(843) 448-2400
Attorney for Appellants